# NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Inc
Washington, D.C.

**Calendar No. 797**

| 101ST CONGRESS *2d Session* | SENATE | REPORT 101-443 |
|---|---|---|

# INTERNATIONAL DATA IMPROVEMENT ACT OF 1990

---

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

## REPORT

OF THE

## SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

## S. 2516

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

---

U.S. GOVERNMENT PRINTING OFFICE

39-010 WASHINGTON : 1990

S263-38

COMMITTEE ON COMMERCE SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
J. JAMES EXON, Nebraska
ALBERT GORE, Jr., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
CHARLES S. ROBB, Virginia

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, Jr., Wisconsin
JOHN McCAIN, Arizona
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi

KEVIN G. CURTIN, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, Jr., *Minority Chief Counsel and Staff Director*

**Calendar No. 797**

101ST CONGRESS
*2d Session*

SENATE

REPORT
101-443

# INTERNATIONAL DATA IMPROVEMENT ACT OF 1990

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

## REPORT

[To accompany S. 2516]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2516) to augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act by allowing that agency to share statistical establishment list information compiled by the Bureau of the Census and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

### PURPOSE OF THE BILL

The primary objective of the legislation is to allow the Department of Commerce's Bureau of Economic Analysis (BEA) access to information collected by the Bureau of the Census (Census). This access will improve the accuracy and analysis of BEA's reports to the public and to Congress on foreign direct investment in the United States. In addition, the bill requires BEA to submit a report on foreign investment to the Committee on Foreign Investment in the United States (CFIUS) upon request. This data exchange will ensure a more thorough and informed analysis by CFIUS of the impact of certain foreign takeovers.

## Background and Needs

BEA collects information on foreign direct investment in the United States under the International Investment and Trade in Services Survey Act (Survey Act). This information is collected at the enterprise or consolidated level, i.e., if an oil company also owns a chemical plant, the oil company would file information with BEA, and the chemical plant will show up as an oil investment.

Census, however, collects information, pursuant to its authority under title 13, U.S.C., at the establishment level, i.e., information on individual plants. Under this bill, BEA will be able to check its enterprise data against Census' establishment data for errors or omissions. In addition, because Census uses more detailed Standard Industrial Classification (SIC) numbers, BEA, in the future, could provide more detailed analysis on an industry-by-industry basis. For example, if a foreign car company, such as Honda, has both wholesale trade and manufacturing functions, it shows up in BEA data as wholesale trade, but Census would have information collected on Honda's Marysville, Ohio plant.

Also involved in foreign investment review is CFIUS, an interagency committee, chaired by Treasury, which administers the Exon-Florio amendment (Exon-Florio) in the 1988 trade law. Exon-Florio gives the President the authority to stop foreign takeovers of U.S. companies which threaten to impair the national security. CFIUS investigates foreign acquisitions, and makes recommendations to the President on whether to take action under Exon-Florio. Currently, CFIUS collects information from the parties to the transaction, and the member agencies of CFIUS (Treasury, Commerce, the U.S. Trade Representative, the Office of Management and Budget, the Departments of Justice, Defense, and State and the Council of Economic Advisers) also develop their own information relevant to the transaction. In addition, CFIUS has the power to subpoena information from the parties to a transaction.

## Legislative History

S. 2516 was introduced by Senator Exon by request on April 25, 1990, and contains provisions originally proposed by the Administration with respect to BEA access to census data. The bill is cosponsored by Senators Hatch, Specter, and Boren.

A hearing was held on this bill as well as on other foreign investment data collection bills pending before the Committee on July 19, 1990. At that hearing, representatives of the Department of Commerce (Commerce), the Department of the Treasury (Treasury), and the Chamber of Commerce testified in support of the bill.

On July 31, 1990, in open executive session, the Committee ordered S. 2516 favorbly reported by voice vote with an amendment offered by Senators Stevens and Exon providing for a BEA foreign investment report to CFISU.

## Summary of Major Provisions

As reported, S. 2516 would:

(1) authorize BEA access to Census' Standard Statistical Establishment Level (SSEL) list information;

(2) require a report to Congress on the operation of the bill; and

(3) require BEA to submit a report to CFIUS upon request outlining the level and extent of foreign direct investment in an industry, including foreign government investment, by country, without disclosing individual investment information.

## Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
*Washington, DC, August 14, 1990.*

Hon. Ernest F. Hollings,
*Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.*

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2516, the International Data Improvement Act of 1990, as ordered reported by the Senate Committee on Commerce, Science, and Transporation, July 31, 1990. We estimate that the bill would result in annual costs to the federal government of about $1.5 million during fiscal years 1991 through 1995, assuming appropriation of the necessary amounts.

S. 2516 would provide the Bureau of Economic Analysis (BEA) access to certain statistical data currently collected by the Bureau of the Census. The bill would require the BEA to report to the Congress on the use of the data. In addition, the bill would require the BEA to report on the extent of foreign direct investment in an industry if such a report is requested by the President.

Based on information from the BEA and the Census Bureau, CBO estimates that the BEA would incur costs of about $1.5 million annually for additional personnel and computer time necessary to integrate the data it would receive from the Census Bureau with the data that it presently collects. This amount includes between $500,000 and $750,000 each year to reimburse the Census Bureau for costs associated with extracting the data and formatting it for use with BEA information. CBO estimates that the reports required by the bill would not impose significant additional costs. Any receipts from fines established by the bill also are not likely to be significant.

No costs would be incurred by state or local governments as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Laura Carter, who can be reached at 226-2860.

Sincerely,

Robert D. Reischauer,
*Director.*

## Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation as reported.

### NUMBER OF PERSONS COVERED

This legislation is a grant of authority to BEA to access some Census data and to provide CFIUS with certain information. The number of persons covered under the bill would be the same as that covered under the Survey Act and would not be affected by this bill.

### ECONOMIC IMPACT

The bill contains no authorization of appropriations for the exchange of data between Census and BEA or between BEA and CFIUS. This exchange will lead to more accurate and detailed information and better understanding. It also may elimiante duplicative information collected by Census and BEA, and thus likely could result in cost savings to businesses covered by the Survey Act and by title 13, U.S.C.

### PRIVACY

This legislation will not have any adverse impact on the personal privacy of any individuals. The information exchanged by BEA and Census may not be published or used in any way that permits the identification of a particular establishment or enterprise. The BEA report to CFIUS is not to disclose individual investment information.

### PAPERWORK

Section 3 authorizes a data exchange but does not authorize the collection of additional information. There are not additional paperwork requirements added by this bill to the Survey Act or title 13, U.S.C.

## Section-by-Section Analysis

### SECTION 1.—SHORT TITLE

This bill may be cited as the "International Data Improvement Act of 1990."

### SECTION 2.—AMENDMENT TO THE INTERNATIONAL

Investment and Trade in Services Survey Act

This section amends the Survey Act (22 U.S.C. 3103) to require a report to Congress on the progress of the integration of SSEL list information from Census and the extent to which the integration permits a higher level of accuracy and analysis on foreign direct investment.

### SECTION 3.—BUREAU OF ECONOMIC ANALYSIS ACCESS TO CENSUS DATA

This section amends title 13, U.S.C., to add a new chapter (Chapter 11) to allow Census to share S.S.E.L. list information with BEA.

The list information is defined to include establishment and company name and address, the form of company organization, SIC code, company and establishment identification numbers and related business activity levels and operational codes. Penalties are increased for public disclosure of list information to a $25,000 fine and no more than five years in prison.

SECTION 4.—BEA REPORT ON FOREIGN DIRECT INVESTMENT

This section contains two amendments to the Survey Act. Sections 4(a) and (b) restate Commerce's responsibility to collect and publish information concerning direct investments by foreign governments, by country. Section 4(c) requires BEA to provide a report to CFIUS upon request. Under section 4(c), CFIUS could request a report from BEA on foreign direct investment in a specific sector. In the case of an Exon-Florio investigation, the report could be provided within 60 days. The report would contain information on the extent of foreign direct investment in the sector, as well as foreign government investment, by country, in the sector. Section 4(d) makes it clear that the requirements of section 4 shall not result in disclosure of confidential information.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY ACT

### SECTION 2 OF THAT ACT

FINDINGS AND PURPOSE

SEC. 2.(a) * * *

(b) It is therefore the purpose of this Act to provide clear and unambiguous authority for the President to collect information on international investment and United States foreign trade in services, whether directly or by affiliates, including related information necessary for assessing the impact of such investment and trade, *to provide for the collection and use of information on direct investments owned or controlled directly or indirectly by foreign governments,* and to provide analyses of such information to the Congress, the executive agencies, and the general public. It is the intent of the Congress that information which is collected from the public under this Act be obtained with a minimum burden on business and other respondents and with no unnecessary duplication of effort, consistent with the national interest in obtaining comprehensive and reliable information on international investment and trade in services.

(c) * * *

SECTION 4 OF THAT ACT

AUTHORITY AND DUTIES

SEC. 4.(a) The President shall, to the extent he deems necessary and feasible—

(1) through (3) * * *

(4) conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; [and]

(5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection and to the benchmark surveys conducted pursuant to subsection (b) and (c)[.] *, including, for foreign direct investment in the United States, information on foreign government ownership of United States affiliates by country; and*

*(6) report to Congress on (A) the progress of the integration of statistical establishment list information from the Census Bureau as authorized under the International Data Improvement Act of 1990 with data collected pursuant to this Act and (B) the extent to which such integration permits a higher level of accuracy and a greater degree of analysis on direct investment and United States services trade.*

(b) through (g) * * *

*(h)(1) The President, or the designee of the President responsible for monitoring the impact of foreign investment in the United States, coordinating implementation of United States policy on investment, and investigating foreign acquisitions under section 721 of the Defense Production Act of 1950 (50 App. U.S.C. 2170), may request a report from the Bureau of Economic Analysis, Department of Commerce. When such request is made in connection with an investigation under such section 721, the report shall be provided within 14 days after the request is made. When such request is not made in connection with an investigation under such section 721, the report shall be provided within 60 days after the request.*

*(2) A report requested under paragraph (1) shall contain the best available information on the extent of foreign direct investment in a given industry, including a breakdown of total investment in the industry, and any foreign government investment in the industry, by country of foreign owner, and any other information that the Bureau of Economic Analysis or such designee of the President considers relevant. The industry information provided shall be at the most detailed level available of Standard Industrial Classification, subject to the requirements of section 5.*

# TITLE 13, UNITED STATES CODE

Section 9 of that Title

**§ 9. Information as confidential; exception**

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, may, except as provided in section 8 of this title *and chapter 11 of this title*—

(1) through (3) * * *

* * * * *

(b) * * *

## *CHAPTER II—EXCHANGE OF STATISTICAL ESTABLISHMENT LIST INFORMATION*

*Sec.*
*401. Exchange and use of list information.*
*402. Definition of statistical establishment list information and content.*
*403. Sanctions, penalties, and immunity from process for purposes of this chapter.*

### *§ 401. Exchange and use of list information*

*(a) The Bureau of Economic Analysis and the Bureau of the Census shall exchange and use statistical establishment list information as defined in section 402 as the Secretary determines is appropriate to augment and improve the quality of international data collected under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 et seq.), subject to the following requirements:*

*(1) List information provided to the Bureau of Economic Analysis shall be only those data collected directly from respondents by the Bureau of the Census under the authority granted to the Secretary by this title.*

*(2) The Director of the Bureau requesting list information shall make the request in writing, and shall certify that the list shall be used only for statistical activities performed pursuant to statutory authority.*

*(b) Notwithstanding any other provision of law, list information shall not be published or used in a way, except as authorized by this title, whereby any particular establishment or enterprise can be identified. Each Bureau shall establish and maintain adequate administrative, technical, and physical safeguards to ensure the integrity, confidentiality, and security of the list information.*

### *§ 402. Definition of statistical establishment list information and content*

*(a) For purpose of this chapter, statistical establishment list information ("list information") shall consist of data for any type of economic unit within the scope of the Standard Industrial Classification (SIC) that are maintained by the Bureau of the Census and the Bureau of Economic Analysis for statistical activities performed pursuant to statutory authority.*

*(b) List information shall include the establishment and company name and address, the form of company organization, SIC code,*

*company and establishment identifying numbers, and related business activity levels and operational codes.*

***§ 403. Sanctions, penalties, and immunity from process for purposes of this chapter***

*(a) Whoever, being in possession of exchanged list information, discloses the list information in any form except as specified in this title shall be fined not more than $25,000 or imprisoned not more than five years, or both.*

*(b) Whoever procures, by fraud, misrepresentation, or other unlawful act, access to exchanged list information shall be fined not more than $25,000 or imprisoned not more than five years, or both.*

*(1) List information shall be immune from legal process and shall not be used as evidence or for any purpose in any Federal, State, or local government action, suit, or other judicial or administrative proceeding except as necessary to enforce mandatory data collection requirements of agency surveys or the provisions of subsections (a) and (b) of this section.*

*(2) List information shall not be disclosed pursuant to any Federal, State, or local government law or regulation, including section 552 of title 5.*

○